

HON. MR. JUSTICE MIDDLETON.

JUNE 4TH, 1914.

DOMINION WASTE CO. v. RAILWAY EQUIPMENT CO.

6 O. W. N. 426.

Landlord and Tenant—Lease—Sub-lease—Covenant for Quiet Enjoyment—Privilege of Making Fireproof Room—Breach of Covenants—Failure to Prove.

The owners of land leased the building thereon to a company which covenanted that it would not carry on any business in the nature of a nuisance or by which the insurance on the premises would be increased. The lessee subleased part of the premises to plaintiff with a clause permitting the erection of a fire-proof room to contain a "waste machine." The company assigned its lease and the reversion of the sub-lease to the defendants. The insurance company objected to such erection as increasing danger, and cancelled the insurance. The lessors obtained an injunction restraining operation of the machine, thereby necessitating the renting of other land and the erection of a building thereon:—

MIDDLETON, J., *held*, on evidence, that an action to recover rent of this land, costs of building, and loss of business profits, failed, as no breach on part of defendants had been shewn.

Action tried at Toronto on 28th May, 1914.

Action for damages for breach of covenants in a lease.

J. C. Macbeth, for the plaintiff.

C. A. Moss, K.C., for the defendant.

HON. MR. JUSTICE MIDDLETON:—The Canada Malleable and Steel Range Manufacturing Company, Limited, the owners of the lands in question, on the 31st July, 1911, granted a lease to the Rhodes Railway Equipment Company, of New York, of a building known as number 1240 Dundas street, Toronto, for a term of five years, commencing 31st July, 1911, with a right of renewal for a further term of two and a half years upon certain terms. The lessee covenanted that it would not permit any business to be carried on upon the premises which would be deemed a nuisance or by which the insurance on the premises would be increased.

On the 15th January, 1912, the lessees made a sub-lease of part of the premises to the plaintiff company for one year and nine months, commencing 15th January, 1912. This sub-lease contains a clause "and the lessee shall have the privilege of making a fireproof room in which will be installed a waste machine." The sub-lease also contains the ordinary covenant for quiet enjoyment.